

Exhibit 4

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 IN AND FOR THE COUNTY OF SAN FRANCISCO

3 BEFORE THE HONORABLE CURTIS E.A. KARNOW

4 DEPARTMENT 304

5
6 THE STATE OF CALIFORNIA,)
et al,)

7 Plaintiff,)

8 vs.)

CASE NO: CGC-11-515784

9)
10 SAMSUNG SDI, CO, LTD,)

11 Defendant,)
12 _____)

13 REPORTER'S TRANSCRIPT OF PROCEEDINGS

14 AUGUST 21, 2014

15 SAN FRANCISCO, CALIFORNIA

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1 PROCEEDINGS FOR THURSDAY, AUGUST 21, 2014

2 BEFORE CURTIS E. A. KARNOW, JUDGE

3 9:06 a.m.

4 PROCEEDINGS

5 THE COURT: Good morning. The first thing
6 I just want to mention has nothing to do with the
7 motion but has to do with trial dates.

8 This department's calendar is filling up
9 very rapidly. Usually trial dates are about a year
10 out, and things have gotten considerably worse over
11 the last month or two.

12 I don't want to wait until we get together
13 again for our CMC to, at least, see if we can clear a
14 date.

15 The first time I can take this case -- I'm
16 assuming about a four-week trial -- I know we don't
17 know how long the trial is going to be at this point,
18 but four weeks is probably a fair estimate, starting
19 December 28th, 2015, or the next week, in early
20 January of 2016. That would be the first date I
21 could give you if we set it today.

22 My plan is to reserve that time. We can
23 get together and we can chat about it in more detail
24 at the CMC. But I think it's essential that we set
25 that time aside, because next time I see you, I think

1 we have been talking about dates in the spring and
2 summer of 2016, and so on. And that's not going to
3 be of any use to anybody.

4 And it doesn't mean that there aren't a lot
5 of things that we can do to resolve the case before
6 that date, but I want to reserve that time.

7 Does anybody object to that?

8 Does anybody, for example, know right now
9 that's impossible, it's just not going to work?

10 MR. CUNNINGHAM: Your Honor, it's not
11 impossible from my point of view, your Honor, but we
12 would appreciate --

13 It's fine if your Honor wants to reserve
14 the time, but we would appreciate the opportunity to
15 come back at CMC and, of course, address it.

16 MR. VARANINI: And that's acceptable to the
17 plaintiffs, your Honor, to set a starting of
18 December 28th.

19 THE COURT: Okay. That'll be, presumably
20 after the Christmas break. I'll be issuing an order
21 today that will reserve that time, and then we can
22 make it clear the parties -- reserve the right to
23 discuss it with me further. And we'll fix it
24 formally, presumably, next time we get together again
25 for the CMC.

1 Before I just give you a brief read as to
2 where I am on some of these issues, do the parties
3 have anything to report to me, in other words, since
4 the papers have been filed, you have discussed
5 something, something else is off the table, some
6 resolution has been had?

7 MR. VARANINI: No, your Honor.

8 MR. CUNNINGHAM: Nothing here, your Honor.

9 THE COURT: Let me take some of the easier
10 ones first.

11 My sense is that we have these issues
12 today. We've got, in effect, the People's motion to
13 compel mediation.

14 We have People's motion for protective
15 order, which to some extent is moot.

16 As Samsung has pointed out, just because
17 the motion has been filed, the People have secured
18 some time, but we want to talk about whether the
19 People need more than September 19.

20 We have, in effect, sort of a motion to
21 stay depositions until, maybe, October 6.

22 We have SDI's motion to compel, which
23 involves roughly three areas, the Foreign Trade
24 Antitrust Improvement Act, Interrogatory Number 10,
25 and Interrogatory Number 25.

1 And we have an issue which may have dropped
2 off the radar, the adequacy of verifications, but I
3 still want to talk about it because I'm worried about
4 it.

5 I think that's what's on the agenda.

6 Does anybody have anything else to add to
7 the agenda for today?

8 MR. VARANINI: No, your Honor, but on
9 depositions, we have scheduled three depositions
10 already for September. If I remember right, it is
11 three, I believe.

12 Well, actually, it is four depositions, and
13 we are working on the final two.

14 So I don't believe that issue is teed up
15 today, but that would depend upon opposing counsel.

16 THE COURT: So as far as you are concerned,
17 there's nothing more to talk about on that issue.

18 MR. VARANINI: I don't believe so. Not
19 until October and the CMC then.

20 THE COURT: Does Samsung agree?

21 MR. CUNNINGHAM: I think that's right. We
22 have got four on calender for September. We are
23 waiting for dates. And I understand counsel to say
24 we will get dates for those remaining two.

25 So nothing more to add on those six

1 depositions. But as your Honor pointed out, there's
2 no point to further stay any further depositions
3 until later.

4 THE COURT: Well, let's just jump in, then.

5 I mean, is there an issue with respect to
6 depositions?

7 MR. VARANINI: Yes, your Honor, there is.
8 Even scheduling these six depositions took a huge
9 effort on our part.

10 We were given informal notice that these
11 depositions, that the opposing side wanted to take
12 them.

13 As your Honor is well aware, opposing
14 counsel, back in January, suggested that they only
15 wanted to take a few. They came up with six.

16 Because it was the end of the fiscal year
17 and people were on vacation, it took us a huge amount
18 of effort even to get those scheduled.

19 We have never said, just be clear, we would
20 not agree to any more depositions. But frankly, at
21 this point, given what we are doing and ending fact
22 discovery, and given the fact that we have scheduled
23 four with two more that we are trying to get
24 scheduled, to do any more depositions before the CMC,
25 frankly, would be impossible.

1 And I can go into what we are doing to
2 finish up fact discovery, if that's necessary for
3 your Honor.

4 THE COURT: Not yet.

5 I'm trying to figure out if we have an
6 issue.

7 So do we have a situation now where SDI has
8 said:

9 We want to take the depositions of A, B and
10 C.

11 And the AG is saying:

12 No, we are not going to do it.

13 Is that what I'm presented with?

14 Or is this just an abstract chat we're
15 having about:

16 Well, Samsung might have some other people
17 in mind some day. And the AG is saying:

18 Well, if you do, we won't agree to them.

19 MR. CUNNINGHAM: I think it's the latter,
20 your Honor, and I don't think there's a real issue
21 with respect to depositions.

22 We have asked specifically for six specific
23 plaintiffs. I hear plaintiff to say they will
24 produce those people.

25 The order that they are asking your Honor

1 to enter here is to stay any additional depositions
2 until after October.

3 And as I is it here, I don't have any plans
4 to ask for any additional depositions beyond those
5 six, until October.

6 Our plan was all along to try to do this
7 initial discovery, including these initial
8 depositions and sit back, assess where we are, and
9 assess whether we need any additional depositions.

10 THE COURT: Okay. We are done with that
11 issue.

12 If something comes up tomorrow, where SDI
13 calls you up and says:

14 Here's some more people we want to do
15 before October 6th, and you look at it and say to
16 yourself we can't do that for whatever reason, come
17 talk to me and I would be happy to chat with you
18 about it.

19 MR. VARANINI: If I may, your Honor, just
20 to keep the record clear, there's no way we can do
21 any additional depositions before October --

22 THE COURT: I'm not talking about that.
23 I'm moving on to a new subject.

24 I'm only going to be discussing things that
25 would be right for resolution today.

1 The next issue, which I think we can take
2 care of fairly rapidly is what I'm calling the
3 People's motion to compel mediation.

4 It's cast in a different sort of way, but I
5 think that at least tees the issue up.

6 This is something which I propose to talk
7 to you about, not today, but when we get together
8 again at the CMC to give you some tentative thoughts
9 about that.

10 I don't think I have the power to compel
11 mediation, because in my mind, mediation as opposed
12 to a mandatory settlement conference is something the
13 parties have to pay for, so if you go to Jams --

14 I guess Judge Walker is at Jams now?

15 MR. VARANINI: Judge Walker is on his own,
16 your Honor.

17 THE COURT: He's on his own. He's probably
18 not doing it for free. There's probably a fee
19 involved.

20 I'm dubious of my authority to compel
21 parties to pay money to get ADR. I'm not dubious
22 about my power to order mandatory settlement
23 conferences.

24 I think that's clear. And if you disagree
25 with me, you should let me know when we get together

1 again next time.

2 Setting those comments aside, there's a far
3 more important issue here. Far more important, which
4 is:

5 When is it going to be smart to do some
6 ADR?

7 And isn't it true that Judge Walker is the
8 best person to do it?

9 Those are rhetorical questions which are
10 not going to be answered today. The parties can
11 think about that and we can talk about it when we get
12 together next time.

13 The whole idea of mediation and mandatory
14 settlement conferences is to be successful. That
15 means people have to be in the position to be able to
16 start talking because they have got all the
17 information they need, even though they don't have
18 all the information they need for trial, and they
19 want to go to the mediator who is best bet for
20 resolving it.

21 Sounds like Judge Walker is probably that
22 person. But ultimately it's a decision that the
23 lawyers in this case and the clients have to make in
24 terms of who they are going to come to.

25 There's definitely going to be ADR involved

1 in this case. I am going to direct that the parties
2 meet and confer on that, what they want to do with
3 respect to the ADR and talk to me about it when they
4 get together again at the CMC.

5 Let's talk about the People's motion for an
6 effective protective order regarding written
7 discovery, supplemental productions.

8 My understanding is this: That reading
9 between the lines, Samsung is comfortable with
10 shifting the dates back for compliance to
11 September 19th, but maybe in the reply papers,
12 there's the suggestion that more time than that is
13 needed.

14 Maybe some of this depends on which
15 interrogatories are going to be answered and how they
16 are going to be answered.

17 And maybe when I turn this over to the AG's
18 office, I will be told that we really should discuss
19 SDI's motion to compel first. And I'm happy to
20 listen to that, since that's really the approach we
21 should take.

22 But let me, at least for now, get a lay of
23 the land as to what the parties actually want at this
24 point, turning to the People first.

25 MR. VARANINI: Yes, your Honor. So we had

1 proposed September 19th on a number of requests that
2 are not before your Honor as part of a global
3 resolution of all the outstanding discovery issues.
4 We didn't get that global resolution of the issues.
5 Instead, we got a motion to compel.

6 And I'm not quarreling with that. That's
7 the right of defendants to do that.

8 But between having to deal with that motion
9 to compel and a number of last minute issues in terms
10 of fact discovery and expert discovery that we have
11 put in our reply brief, what we have asked for -- and
12 this can include the request, the so-called FTAIA
13 request, is to be able to turn in all of our
14 responses.

15 We picked October 5th, which is a Sunday.
16 That might be unreasonable. So October 3rd, a
17 Friday, would make sense to us. But that would allow
18 us to do with thorough job on the outstanding
19 requests, which are trial-related requests, where we
20 have to basically spell out what we are going to be
21 presenting at trial.

22 It would allow us as well, if your Honor
23 orders it, to add in the FTAIA request.

24 It gives us enough time to deal with that
25 and with all of the outstanding issues that we are

1 racing to get done before with close of discovery on
2 September 5th.

3 It also gives, since Samsung has asked for
4 their motion to compel to be brought in November,
5 that would give them over a month to digest the
6 responses and meet and confer, if necessary, before
7 bringing that motion to compel.

8 And we both would be in a position to talk,
9 at least preliminarily at the CMC, to the extent that
10 that would be warranted.

11 So for all those reasons, that's why we
12 suggested that, yes, we can get it done, we will get
13 it done, but that September 19th is just too soon,
14 given what's happened.

15 THE COURT: Are you suggesting that a due
16 date for motion to compel be 45 days after
17 October 3rd?

18 MR. VARANINI: Yes, your Honor.

19 THE COURT: Mr. Cunningham?

20 MR. CUNNINGHAM: Your Honor, we would be
21 fine with that October date, but with one big caveat
22 here, and I want to make sure that this is clear with
23 the Court and the parties, that if we are going to
24 wait until October to get responses to this discovery
25 that we served back in April, there's going to be an

1 understanding here that we're going to need some time
2 after we receive responses to be able to digest those
3 and follow-up on them.

4 And by "follow-up" I mean both follow-up in
5 terms of if we perceive there's a deficiency in the
6 response, but also to follow up with respect to any
7 further discovery we think needs to be done in this
8 case.

9 So we're fine with the October date if the
10 court is fine with that, but we just want to be sure
11 that we're not squeezed on the back end by getting
12 responses to this discovery in October, and then be
13 told that, you know, your period for taking discovery
14 is going to end a month thereafter.

15 THE COURT: Have I set a discovery cut-off
16 in this case?

17 MR. CUNNINGHAM: You have not.

18 MR. VARANINI: No, your Honor. It was our
19 hope that once we have a trial date, we could work
20 backwards and get a discovery cut-off out of that.

21 THE COURT: Well, the trial date is,
22 unfortunately, way out in the future. And it's
23 actually my hope to talk about this more at the CMC.
24 But the dates we are going to set are not going to be
25 a function of the trial date. I want things wrapped

1 up a lot earlier than that. Expert discovery, a wide
2 variety of things, which in a small traditional car
3 accident case, are done in 30 or 40 days of a trial
4 date, while you are already trying to prepare for
5 trial, that approach is usually a big mistake in a
6 case like this.

7 I think if we do have to have a trial in
8 early January 2016, for example, I think we really
9 want to wisely use the time between now and then to,
10 for example, make your lives not so miserable as you
11 might be if you were doing expert discovery in
12 December of 2015.

13 We don't have to have that discussion now,
14 but I think it's clear that we have time to get this
15 discovery done.

16 So in summary, I don't see a problem with
17 further discovery from Samsung, or indeed, the
18 People, because I haven't yet set a discovery cut-off
19 date.

20 And that being the case, I'm not going to
21 spring on the parties to set a position where it's
22 not possible for them to do anything about it.

23 We can talk about those issues when we get
24 together again at the CMC. And the parties are free
25 to propose what those cut-off dates should be.

1 So my understanding is this --

2 Well let me ask Samsung this:

3 Are you telling me in part that 45 days is
4 not long enough for you to figure out whether they
5 have given you adequate responses?

6 MR. CUNNINGHAM: No, your Honor. 45 days
7 would be fine.

8 THE COURT: Okay. Good. We're set.

9 Let me just make one comment before we get
10 on to one of the last issues we need to talk about,
11 which is discovery motions.

12 I'm here looking at approximately, I don't
13 know, maybe 10 pounds of paper or so, for these
14 discovery motions. Most of the paper was not useful.

15 I don't know if you actually thought I was
16 going to read the expert report filed or prepared by
17 William Comanor, but the entire report was provided
18 to me.

19 There were separate statements, as required
20 by the California Rules of Court, that included the
21 discovery at issue and the responses to it, but on
22 this top of that, I also got copies of all of the
23 discovery demands and responses.

24 Totally useless.

25 So you should only provide me things that

1 you think in your deepest recesses of your heart I'm
2 actually going to read.

3 Of course, you have requirements when it
4 comes to the California Rules of Court, and there's
5 nothing we can do about that, except there is one
6 thing, that if you are going to pursue formal
7 discovery, obviously, you have to follow all the
8 rules. That's just the way it is. It produces a lot
9 of paper sometimes, and I know that.

10 Consider the one-shot approach. It's much,
11 much faster. It's only a few pages long sometimes.
12 It just tees up the issues once. You never have to
13 repeat an argument even if there are fourteen
14 interrogatories at stake.

15 So have a look at the guidelines to see if
16 you think that that might satisfy your needs and
17 still allows you to adequately represent your client
18 in a discovery dispute.

19 Let's turn to Samsung's Motion to Compel.
20 Interrogatory Number 22 has been withdrawn.

21 The first one I want to talk about is the
22 Foreign Trade Antitrust Improvement Act, FTAIA.

23 The question posed by Samsung is this, in
24 the interrogatory as I understand it:

25 What is it that the People are going to

1 rely on?

2 Seems to be the common theme between this
3 and some of the other discovery disputes as well.

4 The People's argument, and then the
5 response from SDI shifts gears radically and goes
6 into the merits of this act.

7 If the People's position is that they don't
8 think the need to rely on anything in their
9 affirmative case, I suppose they could say so. And
10 the answer to the interrogatory would be the word
11 "none."

12 And then Samsung could make a motion, make
13 a summary judgment motion. And if Samsung is right
14 on the law, then I guess I dismiss the case or I
15 dismiss something. And if Samsung is wrong, then I
16 don't.

17 But the issue here is:

18 What is it that People are going to rely
19 on?

20 The People's argument to me is:

21 We don't have to rely on anything because
22 that law doesn't apply.

23 Obviously, this is not a good moment for me
24 to decide the applicability of that statute. That
25 would be quite awkward in the context of the

1 discovery dispute.

2 So why doesn't the People -- why don't they
3 just say:

4 We don't think we need to prove anything
5 here, and we are not going to. So our answer is,
6 when it comes to the case in chief, the word "none."

7 How about that?

8 MR. VARANINI: Well, there is a little bit
9 of a problem with that, your Honor. We have to
10 answer that to verify the answer.

11 So what if your Honor does rule that, no,
12 it's not --

13 For example, yes, it applies under the
14 Cartwright Act, and no, it's not an affirmative
15 defense. Then by my answering "none" which is the
16 position we would take at this point, have I waived
17 that?

18 The other side of the coin on that is in
19 terms of if it is part of my affirmative case in
20 chief, I've got two problems:

21 One is, yes, I can provide --

22 And we did say that we are going to rely on
23 the expert. Okay.

24 But then there's the question of, well, we
25 also introduced lay testimony to support our

1 contentions on FTAIA.

2 Whether I would introduce lay testimony or
3 not --

4 THE COURT: Just so the court reporter is
5 clear, when you say FTAIA, you mean, F-T-A-I-A?

6 MR. VARANINI: F-T-A-I-A, yes. I apologize
7 to the court reporter.

8 So then the question comes down to:

9 Okay, if I say "none", if I say expert
10 evidence, and they have defined evidence to exclude
11 expert evidence, so if I say "none" have I barred
12 myself from being able to come back and say, Okay,
13 well, your Honor has ruled it's actually part of our
14 case in chief, it's not an affirmative defense, it's
15 not entirely out of the Cartwright Act, have I now
16 barred myself from being able to present evidence to
17 meet what your Honor has ruled is an element of my
18 case in chief as opposed to dealing with the summary
19 judgment motion where, of course, I can come back
20 even in that context and say, no there is an issue of
21 fact, and here's the evidence that we would present.

22 That's why we think these types of
23 requests, although, they are couched in terms of
24 discovery, are really designed to give the defendants
25 an advantage at summary judgment that's not needed.

1 As your Honor just said, they can bring a
2 motion based on FTAIA. When they bring that motion,
3 they'll present, this is what the evidence is that we
4 have. We think it's Emelio's burden -- the AG's
5 burden, I'm sorry. The Attorney General has not
6 proved their case in chief on this point and can't.
7 There's no triable issue of material fact.

8 We would come back and say, Number 1, it
9 doesn't apply at all under the Cartwright Act.

10 Number 2, it's an affirmative defense.

11 But Number 3, yes, there's a triable issue
12 of material fact.

13 And then those issues will be teed up for
14 this court to be able to work through them and give
15 guidance to the parties in terms of what's going on.

16 But as your Honor just said, this has come
17 up in the context of a request, so I can't literally
18 answer that question and say "none" because that's
19 not accurate.

20 It depends on whether I have the burden or
21 not, or I don't have the burden.

22 If I have the burden, then I have to go
23 back through what we have and say, okay, since your
24 Honor has ruled we have the burden, this is the
25 evidence that we would present.

1 And if on the other hand, we don't have the
2 burden, and I can wait and merely worry about
3 rebutting their affirmative defense, then if all I
4 have to do is rebut, then I can't say anything at
5 this point, because it depends on what they present.

6 And we do have requests out to Samsung that
7 go through all of their affirmative defenses as well
8 as issues like FTAIA and ask them, you know, give us
9 what evidence you are going to present on these
10 issues for precisely that reason.

11 THE COURT: Your demands to them on what
12 evidence they have on this issue are okay, but their
13 requests to you about what evidence you have on this
14 issue is not okay?

15 MR. VARANINI: Well, again, it depends on
16 what FTAIA is.

17 If F-T-A-I-A, if FTAIA does not apply under
18 the Cartwright Act at all, then the whole issue is
19 moot.

20 If it applies under the Cartwright Act, and
21 it's an affirmative defense, that's what your Honor
22 rules.

23 THE COURT: When am I going to rule on
24 that? Like on a motion in limine or something, like
25 whose burden it is?

1 MR. VARANINI: Well, that's what's teed up
2 now in front of your Honor because it has been
3 brought up in the context of a discovery request.
4 And pursuant to the Saras (phonetic) case, if
5 something is not relevant, we shouldn't have to
6 answer it.

7 And it's going to be burdensome. We can do
8 it by October, but it's going to be burdensome to go
9 through our entire record, act as if it is part of
10 our case in chief and extract out all of the evidence
11 that we would be presenting in pursuit of that, both
12 expert evidence and lay evidence.

13 THE COURT: So your view is that we sort of
14 wait until the summary judgment?

15 MR. VARANINI: No, your Honor, that's not
16 my view.

17 THE COURT: What's your view?

18 MR. VARANINI: My view is that your Honor
19 should go ahead and rule and give the parties
20 guidance now so that we can figure out how we deal
21 with these requests.

22 I think it is squarely before this court,
23 does FTAIA apply?

24 If the answer to that is no, then we
25 shouldn't be wasting our time doing these requests at

1 all, because it's going to eat up a considerable
2 amount of our time.

3 But let's say your Honor disagrees on that
4 point, and your Honor says, yes, it's an issue under
5 state law. If it's an affirmative defense, then we
6 shouldn't have to reply to it, it's their defense.

7 And so insofar as we served a request to
8 them, yes, they should have to reply to that, and
9 then we should have to give to them any evidence that
10 we would present by way of rebuttal.

11 That's how it should work. But if your
12 Honor disagrees with that and says no, no, the
13 Attorney General's office is the one that has the
14 burden, it's part of your case in chief, then, yes, I
15 do have to answer all of that. And I have to answer
16 all of it by October.

17 But either way, the guidance from your
18 Honor, in terms of how this issue shakes out is
19 important.

20 And if you look at the Saras (phonetic),
21 your Honor, that clearly says that you are supposed
22 to look and determine if something is relevant or
23 not.

24 THE COURT: If it's part of --

25 Let's say it's part of an affirmative

1 defense --

2 MR. VARANINI: Yes.

3 THE COURT: Well I guess there are three
4 options, right, that you layed out.

5 One, it has got nothing to do with this
6 case at all under any circumstances. It's just
7 never going to come up, because it's federal law.
8 It's something we might chat about in federal court.
9 But not you.

10 Number 2, it's an affirmative defense that
11 the defendant has to raise.

12 And Number 3, it's part of the People's
13 case in chief.

14 MR. VARANINI: Yes.

15 THE COURT: Let's take the latter two
16 situations.

17 In either of those situations, the
18 relevancy requirement for discovery has been met,
19 right? It's discoverable.

20 MR. VARANINI: Correct.

21 THE COURT: The only possible reading of
22 the statute that would absolve you from responding to
23 the discovery is holding that the FTAIA will never
24 have anything to do with this case one way or the
25 other. Right?

1 MR. VARANINI: Yes, with a caveat.

2 And the caveat is if your Honor finds it's
3 an affirmative defense, then we ultimately would have
4 to respond to these responses.

5 But --

6 THE COURT: Let me interrupt you, because
7 you have misunderstood what I said.

8 MR. VARANINI: Okay.

9 THE COURT: If it's part of your case in
10 chief, then clearly, you have to respond to the
11 discovery.

12 MR. VARANINI: Correct.

13 THE COURT: I'm now going to a different
14 scenario where it is --

15 Let's say I think it's part of the -- it's
16 an affirmative defense.

17 MR. VARANINI: Yes.

18 THE COURT: In that situation, the
19 discovery -- relevancy or the discoverability of it
20 has been established, even though it's not your
21 burden. Right? It's still discoverable today.

22 MR. VARANINI: Not today.

23 THE COURT: Why not?

24 MR. VARANINI: Okay. It is discoverable,
25 but not today. If it's an affirmative defense, what

1 we would put on would be by way of rebuttal. So
2 until we see what they are going to put on as an
3 affirmative defense, we can't determine --

4 THE COURT: This doesn't --

5 I'm really not tracking you.

6 Let's say we had a statute of limitations
7 defense in this case, where there's a big dispute
8 that you found out about this on Day X, and they say
9 you actually found out about all this on Day Y, and
10 it turns out that's a big deal because it's
11 indecisive.

12 And we all know that statutes of
13 limitations are affirmative defenses. Right?

14 MR. VARANINI: Yes.

15 THE COURT: Let's assume so, at least for
16 today's purposes.

17 Now, an interrogatory comes from the
18 defendant to the AG and says:

19 When did you learn about this, and other
20 questions about when the People learned, things that
21 relate clearly and only to the affirmative defense of
22 the statute of limitations.

23 MR. VARANINI: Yes.

24 THE COURT: You wouldn't have to answer
25 those questions until what, somewhere halfway through

1 the trial?

2 MR. VARANINI: No, your Honor.

3 But the question that your Honor is posing,
4 if I could just rephrase it slightly, is what's the
5 timing of our responses?

6 THE COURT: Okay.

7 MR. VARANINI: Okay. Your Honor is
8 correct. We would have to respond to that. But it
9 depends on whether there's an issue or not and what
10 kind of evidence they, the other side would be
11 presenting.

12 THE COURT: You mean the discoverability?
13 They have to make an evidentiary showing that they
14 have some evidence before they can issue the demand,
15 the discovery demand to you for you to respond to?

16 MR. VARANINI: Sure, because how do I know
17 how I am going to rebut it.

18 If the question is -- it's their burden and
19 we do rebuttal, your Honor, then the question is what
20 kind of evidence do I have to put on by way of
21 rebutting their case?

22 If I don't know what their case is, then
23 I'm assuming a hypothetical.

24 THE COURT: So if they tell you at the
25 beginning of a case:

1 We don't have any evidence on the statute
2 of limitations right now, we are investigating, but
3 we are pretty sure that you, the AG, learned about
4 this 25 years ago. Here's our interrogatory to you:

5 When did you, Attorney General, learn about
6 this thing?

7 You would be entitled to say:

8 We are not talking to you about this. We
9 are not going to respond to this until, what, they
10 give you a declaration that says we have some
11 evidence, or they respond to your demands first?
12 That sort of thing?

13 MR. VARANINI: Well, it depends on whether
14 that type of fact is something that --

15 They would be doing discovery into whether
16 they have an affirmative defense, just like we do
17 discovery into whether we have a case in chief.

18 So like we do discovery, for example, the
19 Attorney General's office, into whether Samsung was
20 part of a conspiracy.

21 They are doing discovery in terms of
22 whether, what we knew for purposes of putting on an
23 affirmative defense.

24 This kind of defense is different. This
25 type of defense is that you cannot show the direct

1 and substantial effect under FTAIA.

2 Okay. So if you look at the FTAIA as a
3 statute, right? What it says is: If you, the
4 Attorney General's office want a bring a price fixing
5 case. And part of that price fixing case involves
6 conduct that happened overseas, which is what
7 happened here, and it involves commerce that came
8 into this country, which is also what happened here,
9 you can only do that in one of two ways under the
10 statute.

11 One is that you can go under the import
12 commerce provision. So that's, for example, to the
13 extent that tubes were directly imported into the
14 United States. Okay. That's entirely pursuant to
15 the Ninth Circuit Hsiung case. That's entirely
16 outside of the FTAIA.

17 Okay. So there's that part of the case.

18 Then there's the other part of the case
19 where you are talking about, okay, you have a color
20 picture tube, for example, that is made overseas.
21 It's put into a television overseas. That television
22 is then imported into this country. Okay. That
23 specific transaction falls within a different
24 exception to the FTAIA, the direct, substantial and
25 foreseeability exception. Okay.

1 And in terms of the direct, substantial and
2 foreseeability exception to the FTAIA, which is what
3 we are talking about here, that's different than your
4 Honor's example of a statute of limitations, because
5 that, if it's an affirmative defense, they have to
6 show it's not direct, not substantial, not
7 foreseeable it went into the United States, and I
8 only have to rebut it.

9 If, on the other hand, I have to show it's
10 direct, substantial and foreseeable, that changes the
11 kind of evidence I would put on, the nature and
12 quality of it. It changes my whole strategy, and it
13 would change my whole answer to that question.

14 It's a complex answer to that question.
15 It's not as simple as saying what did I know 25 years
16 ago if we are talking a statute of limitations.

17 And so whether I have to rebut or whether I
18 have to put it on my case in chief actually changes a
19 lot the kind of answer I would have to give, which I
20 have to give under oath and which binds our office.

21 THE COURT: I'll hear from Samsung.

22 MR. CUNNINGHAM: Well, I agree completely
23 with the position that your Honor stated that --

24 THE COURT: I haven't taken one yet.

25 MR. CUNNINGHAM: Well, with your initial

1 thoughts, let me say.

2 I think that what's been lost a little bit
3 in the shuffle of the briefing here, is we get into
4 weaves of the FTAIA and how it functions in the fact
5 that this is a discovery motion.

6 And really the pertinent questions are:

7 Is this discovery relevant to the subject
8 matter of the action and is it reasonably calculated
9 to lead to the discovery of admissible evidence?

10 And the answers to those questions are
11 clearly yes here.

12 We are asking about the CRTs and the
13 monitors and the televisions that plaintiffs
14 purchased. So that's the subject matter of the
15 action.

16 And we are asking plaintiffs:

17 What's the evidence that you are going to
18 put forth on these issues relating to foreign
19 commerce?

20 And that's reasonably calculated to lead to
21 the discovery of admissible evidence.

22 Now, I heard your Honor's initial comments
23 to say you don't think you have to decide these
24 issues of whether the FTAIA applies to the Cartwright
25 Act and what the burden is.

1 And I agree with that statement. I don't
2 think that's necessary to resolve on this motion. I
3 think it's been sufficiently briefed that the court
4 could decide that. I think that there's been plenty
5 of case law, and I think there's no question based on
6 that case law that, yes, it does apply.

7 THE COURT: Well, if I concluded that it
8 clearly doesn't apply. I mean, if you asked
9 something to the AG about, you know, how do you
10 expect to prove negligence in the manufacture of
11 these tubes, the AG would look at that and say that
12 has nothing to do with this case, and I might have to
13 decide that, and we wouldn't have discovery on that.
14 Right?

15 I mean, there has to be this nexus for the
16 issues which were legitimately raised by the
17 pleadings.

18 MR. CUNNINGHAM: Well, I think that --
19 going back to your Honor's initial comment -- if that
20 is your decision that the FTAIA has nothing to do
21 with this case, that --

22 I mean, we are weighing the relevance of
23 the request versus the burden in answering. Right?

24 So if that's your Honor's position, I think
25 plaintiffs can fairly come back and say, as your

1 Honor suggested, "none" in response to each of these
2 questions.

3 What's your evidence that, you know, that
4 the sale of the CRT tube had a direct, substantial
5 and reasonably foreseeable effect on U.S. commerce?

6 None. We have no evidence on that.

7 And that answer could be given with no
8 burden at all.

9 So I think what's important to keep in mind
10 here is the function of this discovery. What we are
11 trying to do is appropriately tee up these issues for
12 a resolution down the road.

13 And so we are asking what the Attorney
14 General's evidence is on these issues, which we think
15 are crucial issues and have potential to really pare
16 down a good amount of this case and narrow the
17 issues.

18 THE COURT: My understanding is that the AG
19 actually has provided a response, and that your
20 problem -- it's not that they haven't replied, but
21 your problem is that what they have done is to point
22 to 148 depositions and 3,000 exhibits. And you have
23 said that doesn't work as a response. You have to be
24 more specific.

25 MR. CUNNINGHAM: Right. That's exactly

1 right, your Honor.

2 And so the problem with that is it doesn't
3 serve the function of the discovery here of narrowing
4 the issues, but what can we do with that response?

5 When we go to make our summary judgment
6 motion, we don't have the universe of evidence that
7 the Attorney General is really going to use to prove
8 these critical foreign commerce facts.

9 And so what we are trying to prevent here
10 is I'll spring a summary judgment motion on the
11 FTAIA, and having in opposition the Attorney General
12 tell us for the first time:

13 Our proof is this data set and that data
14 set.

15 And then we have to deal with that on the
16 reply.

17 And so I really think it serves everybody's
18 interests here, and particularly would facilitate
19 resolution of the issues for the court if everybody
20 could put their cards on the table on this issue now
21 and we could deal with it squarely when it comes time
22 for summary judgment.

23 THE COURT: Let me just give the last word
24 to the AG, and then we'll move on.

25 MR. VARANINI: Yes, your Honor.

1 So when we talk about laying the cards on
2 the table, it depends on what kind of game are we
3 playing here, if we are going to keep going with the
4 card analogy.

5 So if the game here is rebut the
6 affirmative defense, that's a different set of cards
7 that get played as opposed to the game being you have
8 to do this as part of your case in chief. That's a
9 different response.

10 So actually in the absence of guidance from
11 your Honor, how we are going to have to interpret
12 this is we are going to have to respond as if this is
13 our case in chief, which means we have to do a lot of
14 extra work on the issues where your Honor may rule it
15 doesn't even apply at all, in which case, that would
16 solve it, we are done, and that enables us to focus
17 on other more important issues.

18 Or your Honor could say, yes, it is
19 relevant, but it's an affirmative defense, so, yes,
20 you Attorney General, do need to respond, but you can
21 wait and see what Samsung's going to present on that
22 issue. And then I would want a response within 30
23 days after their response.

24 And that would be reasonable because that
25 forces people to put their cards on the table, but at

1 least we know the game that we are actually playing
2 here.

3 THE COURT: Suppose Samsung didn't even
4 have their demand out? Suppose they asked you for
5 this stuff?

6 Your position is that:

7 Well, we don't have to answer your question
8 until you have served us with discovery?

9 Or what?

10 You served them with discovery first on
11 this issue?

12 You need to send them a demand first on the
13 statute?

14 MR. VARANINI: I'm sorry, your Honor. I'm
15 not sure I understood the question.

16 THE COURT: I'm going to move on to
17 Interrogatory Number 10. I think we exhausted that
18 issue.

19 Interrogatory 10 is the same structure,
20 which is again, what is it that you are going to rely
21 on with respect to identifying the makers of these
22 CRTs?

23 That's what they want to know. What are
24 you going to rely on?

25 So it's not true, as the People's papers

1 suggest, that it actually requires you to talk to
2 everybody in California and ask them to go into their
3 cabinets, rip open their televisions, read the
4 interior labels and try and figure out who made the
5 CRTs at issue.

6 The question is: What is it that you are
7 going to rely on?

8 And your answer might be:

9 Nothing;

10 Or, we have got an expert;

11 Or, we have some spreadsheets;

12 Or, we don't think we have to.

13 What they are asking you is:

14 What is your plan?

15 What is your plan in terms of what you are
16 going to be producing on this issue?

17 So what's wrong with that question?

18 MR. VARANINI: Well, as your Honor
19 rephrased it, nothing. I don't have a problem with
20 that.

21 Your Honor rephrased it as:

22 What's your plan?

23 What are you going to produce on this
24 issue?

25 We told them that we are going to produce

1 expert evidence based on market shares.

2 We have, even in response to their
3 criticism, you haven't pointed us to where in the
4 expert report we have done that.

5 THE COURT: Okay.

6 MR. VARANINI: So as rephrased? No, we
7 don't have a problem with what your Honor is saying.

8 THE COURT: So does Samsung agree that
9 that's the thrust of your interrogatory?

10 MR. CUNNINGHAM: It is, your Honor.

11 THE COURT: Okay. Let's move on.

12 Next one is Interrogatory Number 25.

13 What evidence is the plaintiff going to
14 relying to show that the conspiracy included
15 agreements on transfer prices?

16 My understanding is that there's actually
17 an agreement here, reading between the lines, that
18 the People have basically agreed to respond to that
19 within the time frame that we are going to be
20 setting, October 3rd. Right?

21 MR. VARANINI: Yes, your Honor. We will
22 give them a more specific response like we agreed to
23 for other requests by them.

24 THE COURT: So we're good.

25 The last thing I just want to talk about

1 briefly -- and we don't need to have a resolution of
2 this now -- and it may be that the parties will work
3 this out on their own -- is the adequacy of
4 verification.

5 It has been raised by, at least, in some of
6 the opening papers. I think by the time you get to
7 the reply, it sounds like the parties don't think we
8 we have to address it today, which is fine, because
9 I'm not reaching out for problems.

10 But I'm a little worried about the
11 situation because by the time we get to trial, I
12 think we need the ability to have, for example, the
13 defendant cross-examine a person, a live person on
14 the stand, about interrogatory responses or responses
15 to RFAs or something like that.

16 Now, I completely understand the practical
17 issues that the AG's office faces and why it is
18 convenient to have an attorney at the AG's office do
19 the verifications. That's perfectly obvious.

20 But I'm worried about what the trial is
21 going to look like, especially if a lead attorney
22 from the AG's office, who is going to be spending
23 much of his or her time at the podium talking to a
24 jury or talking to me, as a lawyer that has to take
25 the stand to testify about why he or she thinks these

1 verifications were trustworthy, where the information
2 came from and so on. So that's my concern. What is
3 it that the AG's office thinks is probably going to
4 happen at trial if we go down this path?

5 MR. VARANINI: If I may, your Honor. We
6 represent actual persons.

7 THE COURT: Right.

8 MR. VARANINI: We represent government
9 entities. There has never been a case insofar as I'm
10 aware where an AG attorney needed to be
11 cross-examined on the stand about verifications that
12 they did when they were acting in those capacities.

13 There is the possibility, I'm sure -- I
14 would tend to doubt it, frankly. I think it's
15 unlikely. Maybe opposing counsel would disagree with
16 me, but I can imagine a case where a government
17 entity would need to be cross-examined on the stand
18 about, let's say, bidding practices. Again, I doubt
19 it. But let's just say that's possible, because
20 that's really the only scenario I can think of here,
21 then we would be obligated to produce somebody who
22 could speak about that. And that's the point of the
23 depositions.

24 So right now we have these six depositions.
25 And we've said that they can bring up the possibility

1 of needing to do more later.

2 Those People would be the kind of People
3 who we would be calling to the stand. I wouldn't be
4 called to the stand for anything that has to do with
5 any of that.

6 So I don't practically think there was
7 going to be a problem here. If there was, the
8 legislature never would have set up this scheme in
9 the first place for us to be able to represent these
10 people and do verifications on their behalf, because
11 it would become impossible under the state rules to
12 do a case in that eventuality.

13 THE COURT: So your view is that if Samsung
14 issues a trial subpoena for you to testify about a
15 verification and about the contents of, let's say,
16 interrogatory responses --

17 MR. VARANINI: Yes.

18 THE COURT: -- that that would be not
19 proper?

20 MR. VARANINI: My view would be that
21 it would not. I can't say it would never be proper,
22 but my view would be that in the normal course of
23 things, yes, it would be improper. It would violate
24 the whole scheme set up by the legislature by which
25 we can represent people.

1 It's like a class action case in this
2 sense. So I just thought of this analogy, and it's
3 off the top of my head, which is always dangerous,
4 but you have a class action case, and you have a
5 situation -- sure, you have the class representative,
6 who you can put up on the stand, I suppose.

7 Would you do that for, let's say, the
8 conspiracy side of the case?

9 No.

10 But let's say you are talking about
11 damages. And for some reason there's something
12 involved where you want to hear -- you know, you want
13 to examine the class representative to show that it's
14 unlikely there were ever overcharges. Say you want
15 to do that.

16 Well, you talk about government entities.
17 And there are -- with your Honor's guidance, there
18 are ways that witnesses could be put up to talk about
19 that.

20 If you are talking about actual persons,
21 that's going to be only through experts. We are not
22 going to go get people at random and put them up on
23 stand. We don't have a class representative. And to
24 follow the legislature's scheme that they set out
25 under which we can represent people, we don't need to

1 show injury to be able to bring a Parens claim.

2 THE COURT: I understand that.

3 MR. VARANINI: So I guess my point, your
4 Honor, is that, yes it would be improper. It would
5 be unlikely if not impossible that it would ever be
6 relevant.

7 And to the extent that one could imagine
8 issue with all the government entities, that is
9 something we can deal with without having to put
10 myself on the stand, for example, because I am the
11 one doing the verifications here.

12 THE COURT: Does Samsung think we have an
13 issue to discuss or not at this time?

14 MR. CUNNINGHAM: I do think so coming into
15 the courtroom, this morning, but I'm not quite sure
16 now.

17 I initially viewed this as a non-issue
18 because I thought that, you know, we could use
19 verifications by the Attorney General acting as an
20 attorney for the government entities to perform this
21 cross-examination that your Honor is talking about.

22 THE COURT: Who did you think you would
23 cross?

24 MR. CUNNINGHAM: Well, for instance, a
25 purchaser from one of the government entities.

1 THE COURT: You are right.

2 MR. CUNNINGHAM: I understand the Parens
3 claim is different animal. And practically speaking,
4 I don't know how we would go about getting
5 verifications from everybody that bought a television
6 in California. So I'm speaking strictly about the
7 government entity claims here.

8 So I didn't think it was an issue with the
9 verification. We resisted their motion for
10 protective order just because we wanted to leave the
11 option open in the case something unforeseen happened
12 down the road to try to pursue verifications from
13 those entities.

14 But if I hear your Honor telling me that
15 there might be a problem with using an interrogatory
16 response, for example, from a government entity agent
17 that's signed by counsel from the AG's office --

18 THE COURT: That's not what I'm suggesting
19 at all. I don't think that's at issue.

20 I mean, if they submit a verification with
21 respect to the interrogatories and there's no motion
22 made about it and there's no fuss about it, then
23 there you are, you've got verifying discovery.

24 And I would find it bizarre that in the
25 event of trial, that the AG would then object to your

1 using it when they are the very party who thought to
2 themselves this is a perfectly appropriate way of
3 verifying.

4 So I don't have any concern about that at
5 all. I would find that bizarre, and various
6 doctrines of estoppel and so on would probably
7 inhibit the AG's office from taking such a position.

8 I think I had a different issue in mind,
9 which I think the Attorney General's office is
10 suggesting as a practical solution to it. The
11 different issue is that there are situations in which
12 lawyers want to cross-examine the verifier:

13 Is it true that you signed these
14 interrogatories?

15 How could you think that this was true at
16 the time?

17 You didn't --

18 You know, to cross-examination in that
19 sense.

20 I think what the AG's office is saying
21 is -- and I think you hinted to it yourself -- if
22 there is such a factual issue that pertains to some
23 government agency, you can actually call that agency
24 into court and you can actually get the firsthand
25 information in at that point.

1 You will, perhaps, be inhibited, arguably
2 from cross-examining the verifier.

3 But if there's no issue now, there's no
4 issue, and I'm not going to belabor it.

5 I'm going to get an order out on all these
6 discovery issues, and including memorializing
7 agreements that have been reached. There have been a
8 couple here -- not all of them -- that have been
9 subject to agreement. I will get them out within the
10 next day or two. And I will see everybody at the
11 next CMC.

12 MR. CUNNINGHAM: If I may, your Honor. A
13 couple points.

14 THE COURT: Sure.

15 MR. CUNNINGHAM: If I may go back, briefly,
16 to Interrogatory Number 10.

17 THE COURT: Number 10. Okay.

18 MR. CUNNINGHAM: That's the interrogatory
19 that asks for the evidence the Attorney General is
20 going to put forth regarding the manufacturer of the
21 CRTs inside the televisions, in the monitors.

22 Their response, as it currently stands to
23 that interrogatory, cites the entire expert report
24 and all of the backup data, et cetera. The Attorney
25 General in their papers, in this motion, has narrowed

1 that down considerably to just a couple pages and
2 specific pieces of evidence. And I understand now
3 that that's the evidence they intend to rely on to
4 show this point.

5 We would just ask that in their
6 supplemental response the Attorney General provides a
7 verified response that specifies that narrow range of
8 evidence.

9 MR. VARANINI: That's fine, your Honor.

10 MR. CUNNINGHAM: And then the only other
11 issue that I wanted to raise was with respect to the
12 timing of the next case management conference.

13 I don't know if the Attorney General
14 agrees, but I think it may serve us to maybe push
15 that back a month, or four or five or six weeks, so
16 that we'll have these supplemental responses in hand?

17 THE COURT: I don't want to do that. Even
18 if it's a brief discussion, I would like to meet with
19 you, and you can tell me at that point if there's
20 more important work to do down the road. But I want
21 to make sure that I'm on top of this, that we don't
22 have discovery disputes.

23 Even if you just come in for five or ten
24 minutes. If you are coming from out of town, I'm
25 happy to do it by telephone if that's more

1 convenient, but I want to make sure that I just stay
2 on top of this. And I'll see you soon.

3 Thank you very much. Appreciate it.

4 MR. VARANINI: Thank you, your Honor.

5 MR. CUNNINGHAM: Thank you, your Honor.

6

7 (Proceedings were concluded at 9:58 a.m.)

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REPORTER'S CERTIFICATE

I, KATHRYN LLOYD, CSR No. 5955, Certified
Shorthand Reporter, certify:

That the foregoing proceedings were taken before
me at the time and place therein set forth;


That the statements of the parties made at the
time of the proceedings were recorded
stenographically by me and were thereafter
transcribed;

That the foregoing is a true and correct
transcript of my shorthand notes so taken.

I further certify that I am not a relative or
employee of any attorney of the parties, nor
financially interested in the action.

I declare under penalty of perjury under the
laws of California that the foregoing is true and
correct.

Dated this ____ day of ____, 2014.

A handwritten signature in dark ink, appearing to be 'K. Lloyd', written over a horizontal line.

KATHRYN LLOYD, CSR 5955

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